

REMARKS

Claims 1, 2, 5, 6, 10, 20–23, 30, 36, 39, and 40 are pending in this application. Non-elected claims 21–23, 30, and 36 have been withdrawn from consideration by the Examiner. By this Amendment, claims 1, 2, and 10 are amended, claim 40 is added, and claims 37 and 38 are canceled. Support for the amendments to the claims may be found, for example, in the claims and the specification as originally filed. No new matter is added.

In view of the foregoing amendments and following remarks, reconsideration and allowance are respectfully requested.

I. Interview

The courtesies extended to Applicants' representative by Examiners Mitchell and Sullivan at the interview held November 14, 2007, are appreciated. The reasons presented at the interview as warranting favorable action are incorporated into the remarks below, which constitute Applicants' record of the interview.

II. Restriction

As indicated above, claims 21–23, 30, and 36 have been withdrawn from consideration. Each of claims 21–23, 30, and 36 depends from and includes all of the limitations of elected claim 1. Accordingly, upon allowance of claim 1, claims 21–23, 30, and 36 should be rejoined, considered in this application, and allowed.

III. Rejection under 35 U.S.C. §112, Second Paragraph

The Office Action rejects claim 10 as being indefinite under 35 U.S.C. §112, second paragraph. For the reasons already made of record and the reasons presented below, Applicants respectfully traverse the rejection.

MPEP 2173.05(b) provides(emphasis added):

When a term of degree is presented in a claim, **first** a determination is to be made as to whether the specification provides some standard for measuring that degree. **If it does not**, a determination is made as to whether **one of ordinary skill**

in the art, in view of the prior art and the status of the art, would be nevertheless reasonably apprised of the scope of the invention.

Applicants respectfully submit that one of ordinary skill in the art, in view of the prior art and the status of the art, would be reasonably apprised of which primers fall within the scope of claim 10 in which primers would fall outside the scope of claim 10. As discussed during the personal interview, stringent hybridization conditions need to be determined and optimized for each nucleotide sequence one desires to amplify. Such determinations are routinely done in the art. Therefore, one of ordinary skill in the art can easily determine what the stringency requirements are for amplifying SEQ ID NO:11 or fragment thereof, and whether a given primer can amplify that desired sequence under those conditions. Although this is not an enablement rejection, Applicants believe that the analysis is similar in this situation.

Reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejections under 35 U.S.C. §112, First Paragraph

The Office Action rejects claims 1, 2, 5, 6, 10, 20, and 37–39 under 35 U.S.C. §112, first paragraph, as failing to comply with the written description and enablement requirements. Applicants respectfully submit that the amendments set forth above render the rejections moot. Reconsideration and withdrawal of the rejections are respectfully requested.

V. Rejection Under 35 U.S.C. §102

The Office Action rejects claim 10 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 5,708,157 to Jacobs et al. ("Jacobs"). Applicants respectfully traverse the rejection.

Despite its asserted teachings, Jacobs does not teach an "amplification primer for amplifying the nucleotide sequence set forth in SEQ ID NO:11 or a fragment thereof, comprising a nucleotide sequence that hybridizes under highly stringent conditions with the nucleotide sequence set forth in SEQ ID NO:11 or with any specific amplification product

thereof, wherein the primer is 10 to 30 nucleotides in length." The sequence disclosed by Jacobs and relied upon by the Office Action is much greater than 30 nucleotides in length.

For at least this reason, Jacobs does not anticipate claim 10. Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

VI. New Claim

By this Amendment, new claim 40 is presented. Claim 40 depends from claim 10 and, thus, is allowable at least for the reasons discussed above with respect to claim 10.

VII. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Date: February 29, 2008

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